



Circular

Circular number:	W-FRSC(2021)02	Date issued:	4 February 2021
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Status:	For Action
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Title:	Remedying Age Discrimination in Public Sector Pension Schemes – HM Treasury Consultation Response
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Issued by:	Natalie Spiller Fire Services Branch
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Addressed to:	Please forward to:
Chief Fire Officers	FRA Chairs Treasurers Pensions Officers

Summary
This Circular outlines the UK Government's approach to addressing unlawful age discrimination in firefighters' pension schemes (and other public sector schemes), and the consequences that will have for pension scheme valuation.

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1. The reforms to all public sector pension schemes in 2015 included a policy of transitional protection, which meant that members closest to normal pension age remained in their existing schemes. However, in December 2018, the Court of Appeal found that transitional protection amounted to unlawful discrimination on the grounds of age.
2. In July 2019, the UK Government accepted that the Court’s judgment had implications for other public service pension schemes which contained similar transitional protection arrangements. Last autumn, the Treasury consulted on proposals to remedy the unlawful discrimination.
3. Today, the UK Government has announced that following public consultation, it will introduce primary legislation to make retrospective changes to address this discrimination. The main points of the UK Government’s proposals are that:
 - a. All affected scheme members will receive a remedy, regardless of whether they were party to the legal action that prompted these changes. That includes all of those who were in service on 31 March 2012 and 1 April 2015. Those joining after the former date, or leaving before the latter date, are unaffected.
 - b. There will be a “remedy period” covering 1 April 2015 to 31 March 2022. During that period, all affected members will revert to the scheme they purportedly left in April 2015 (their “legacy scheme”), and will be subject to legacy scheme terms on, for instance, contribution rates, pensionable pay and retirement age. This will be an automatic process and no member needs to make a choice or a claim. Those who were purportedly fully protected in 2015 will of course be unaffected by this, as they have always remained members of their legacy schemes.
 - c. All affected members, and all those purportedly protected in 2015, will transfer to the 2015 Scheme on 1 April 2022, and the 1992 and 2007 Schemes will be closed to future accrual. There will be no exceptions to this on the grounds of age or otherwise, but all benefits accrued in the legacy scheme will be preserved.
 - d. Members will receive a ‘deferred choice’ of which pension scheme benefits they would prefer to receive for the remedy period, which will be exercisable at the point they retire. This will ensure scheme members will make an informed and optimal choice based on their actual entitlements in both schemes. Where eligible members have already retired before the changes can be introduced, they will be provided with a retrospective choice backdated to the date payment of their benefits commenced.
4. In summary, the effect on scheme members is as follows:

Start of pensionable service	Age on 1 April 2012	End of pensionable service	Scheme membership	
			during remedy period	after remedy period
Before 1 April 2012	45 or older	Before 1 April 2015	Not applicable	Not applicable
		On or after 1 April 2015	Legacy scheme (unchanged)	2015 Scheme
Before 1 April 2012	44 or younger	Before 1 April 2015	Not applicable	Not applicable
		On or after 1 April 2015	Reversion to legacy scheme	2015 Scheme
On or after 1 April 2012	Any age	Any date	2015 Scheme	2015 Scheme

5. However, many points of detail still need to be addressed before these changes can be implemented; and many of those will require the Welsh Ministers to make changes to the scheme rules. These include general issues such as taxation and interest, as well as issues specific to the firefighters' schemes such as accrued shortfalls or surpluses in contributions, the treatment of taper protected members and the relatively disadvantageous terms of the 2007 Scheme compared to the 2015 one. We will be looking to engage with FRAs and with representative bodies to identify and address these issues, and will establish a sub-group of the Scheme Advisory Board (SAB) to that end.
6. A significant percentage of active firefighters will be affected by this decision, as such we would recommend that FRAs, as Scheme Managers, contact scheme members as soon as possible to inform them of the proposals. A form of text to include within a letter has been provided at Annex 1; we would urge FRAs not to depart significantly from the sense of that, and in particular not to seek to explain points of detail which are yet to be resolved.
7. The UK Government's Consultation Response is available [here](#). In addition, the Home Office has published some frequently asked questions in response to the consultation, which are available [here](#).
8. Please note that both of these documents represent the UK Government's view, not necessarily that of the Welsh Government. However, we believe both to be useful and accurate.

SCHEME VALUATIONS

Completion of the Cost Cap Element of the 2016 Valuation

9. In January 2019, the Treasury announced that it was pausing the cost cap element of the 2016 valuation process because of the potentially significant but uncertain impact of the Court of Appeal judgment. This meant it was not possible to assess the value of the current public service pension arrangements with any certainty. Treasury Directions in March 2019 formalised the cost cap pause whilst requiring the rest of the valuation results to be implemented, and as a result employer contribution rates increased from 1 April 2019.
10. In July 2020, alongside its consultation on age discrimination remedy, the Treasury provided an update on the 2016 cost cap. It indicated that the cost control mechanism would be re-started, and made clear that the costs associated with the increased value of schemes to members as a result of age discrimination remedy would be taken into account in the completion of the process, as these were 'member costs'. Restarting the mechanism was though dependent on which approach to remedy was agreed, immediate choice or deferred choice underpin.
11. The Treasury has announced, alongside its consultation response, that the cost control element of the 2016 valuation will now be completed using "Deferred Choice Underpin" model for remedy described above. The announcement is available [here](#).
12. Some important aspects to note are:
 - Before the inclusion of McCloud/Sargeant remedy benefits, provisional 2016 cost cap results indicated floor breaches in most schemes. The revised valuation directions are not yet finalised, but early estimates indicate that, with remedy benefits included, some ceiling breaches are now likely. If normal statutory procedures were followed, a ceiling breach would lead to a reduction in member benefits in order to bring costs back to target. However, the Treasury has confirmed that, for the 2016 valuation, the impact of any ceiling breaches will be waived.

- Any continued floor breaches following recalculation will, though, be implemented; and any improvements to members' benefits that are due will be delivered, effective from 1 April 2019.
 - These decisions apply only to the 2016 valuation.
13. We will set out the detailed handling and engagement mechanisms for the completion of the 2016 cost cap calculation in a paper for the Firefighters' Pension Scheme Advisory Board for Wales in due course.

2020 Valuation

14. The Treasury indicated that it would be commissioning a review of the cost cap mechanism in 2018. That review is being conducted by the Government Actuary's Department and is expected to report to the Treasury by April 2021. The Treasury is aiming to make any resulting changes before the 2020 valuations are completed. Changes to the employer contribution rates following the 2020 valuations will not now take effect until 2024.
15. Further details, including valuation timetables, and the role of the Scheme Advisory Board throughout the valuation process, will be discussed in detail at future Board meetings.

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